

ENVIRONMENTAL PROTECTION AGENCY

[FRL-7916-3]

**Protection of Stratospheric Ozone: Process for Exempting
Critical Uses of Methyl Bromide**

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of solicitation of applications and information on alternatives

SUMMARY: EPA is soliciting applications for the Critical Use Exemption from the phaseout of methyl bromide for 2007 and beyond. This application process offers users of methyl bromide the opportunity to provide technical and economic information to support a "critical use" claim. Today's notice also invites interested parties to provide information on the technical and economic feasibility of methyl bromide alternatives.

Methyl bromide is a chemical pesticide that has been identified under the Montreal Protocol on Substances that Deplete the Ozone Layer and the Clean Air Act as an ozone-depleting substance. The complete phaseout of methyl bromide took effect on January 1, 2005. The Critical Use Exemption is designed to allow continued production and import of methyl bromide after the phaseout for those uses that have no technically and economically feasible alternatives. Critical Use Exemptions are exemptions from the January 1, 2005 methyl bromide phaseout.

Applicants for the exemption are requested to submit technical and economic information to EPA for U.S. review. The U.S. will then create a national nomination for review by the

Parties to the Montreal Protocol. EPA encourages users with similar circumstances of use to submit a single application. Please contact your state regulatory agency to receive information about their involvement in the process.

DATES: Applications for the Critical Use Exemption must be postmarked on or before August 8, 2005.

ADDRESSES: Applications for the methyl bromide Critical Use Exemption should be submitted in duplicate (two copies) by mail to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, Mail Code 6205J, 1200 Pennsylvania Ave, N.W., Washington, DC 20460 or by courier delivery (other than U.S. Post Office overnight) to: U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, Attention Methyl Bromide Review Team, 1310 L St. NW, Room 827L, Washington DC 20005. EPA also encourages users to submit their applications electronically to Marta Montoro, Stratospheric Protection Division, at montoro.marta@epa.gov. If the application is submitted electronically, applicants are requested to fax a signed copy of Worksheet 1 to Marta Montoro at (202) 343-2337 or (202) 343-2338 by the application deadline.

FOR FURTHER INFORMATION CONTACT:

General Information: U.S. EPA Stratospheric Ozone Information Hotline, 1-800-296-1996; also <http://www.epa.gov/ozone/mbr>.

Technical Information: Colwell Cook, U.S. Environmental

Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, 703-308-8146.
Email: cook.colwell@epa.gov

Economic Information: Elisa Rim, U.S. Environmental Protection Agency, Office of Pesticide Programs (7503C), 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, 703-308-8123. Email: rim.elisa@epa.gov

Regulatory Information: Marta Montoro, U.S. Environmental Protection Agency, Stratospheric Protection Division (6205J), 1200 Pennsylvania Ave., N.W., Washington, DC, 20460, 202-343-9321. Email: montoro.marta@epa.gov

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I. What Do I Need to Know to Respond to This Request for Applications?

A. *Who can respond to this request for information?*

The application form may be submitted either by a consortium representing multiple users or by individual users who anticipate needing methyl bromide in 2007 and beyond and believe there are no technically and economically feasible alternatives. EPA encourages groups of users with similar circumstances of use to submit a single application (for example, any number of pre-plant users with similar soil, pest, and climactic conditions can join

together to submit a single application). In some instances, state agencies will assist users with the application process (see discussion of voluntary state involvement in Part I.B. below).

In addition to requesting information from applicants for the Critical Use Exemption, this solicitation for information provides an opportunity for any interested party to provide EPA with information on methyl bromide alternatives (e.g. technical and/or economic feasibility research). The application form for the methyl bromide Critical Use Exemption and other information on research relevant to alternatives must be sent to the addresses specified above or emailed to the address specified above. The applicant's signature, which is required for processing and is required on Worksheet 1 of the application, may be faxed to Marta Montoro at (202) 343-2337 or (202) 343-2338.

B. Whom can I contact to find out if a consortium is submitting an application form for my methyl bromide use?

Please contact your local, state, regional or national commodity association to find out if they plan on submitting an application on behalf of your commodity group.

Additionally, you should contact your state regulatory agency (generally this will be the State Department of Agriculture or State Environmental Protection Agency) to receive information about their involvement in the process. If your state agency has chosen to participate, EPA encourages all applicants to first submit their applications to the state

regulatory agency, which will then forward them to EPA. The National Pesticide Information Center website is one resource available for identifying the lead pesticide agency in each state (<http://ace.orst.edu/info/npic/state1.htm>).

C. How do I obtain an Application Form for the methyl bromide Critical Use Exemption?

An Application Form for the methyl bromide Critical Use Exemption can be obtained either in electronic or hard-copy form. EPA encourages use of the electronic form. Applications can be obtained in the following ways:

1. PDF format and Microsoft Excel at EPA website:
<http://www.epa.gov/ozone/mbr>;
 2. Hard copy ordered through the Stratospheric Ozone Protection Hotline at 1-800-296-1996;
 3. Hard-copy format at Air Docket No. OAR-2003-0017. The docket is located in room B-102, EPA West Building, U.S. Environmental Protection Agency, 1301 Constitution Ave. NW, Washington D.C., 20004. The Docket Office is open from 8:30 a.m. until 4:30 p.m. Monday through Friday. A reasonable fee may be charged by EPA for copying docket materials.
- D. What alternatives must applicants address when applying for a Critical Use Exemption?

To support the assertion that a specific use of methyl bromide is "critical," applicants are expected to demonstrate that there are no technically and economically feasible alternatives available to the user of methyl bromide. The

Parties to the Montreal Protocol have developed an "International Index" of methyl bromide alternatives which lists chemical and non-chemical alternatives, by crop (http://www.epa.gov/ozone/mbr/in_alt_in.html). The chemicals and non-chemical practices included on this index were identified by the international technical advisory groups under the Montreal Protocol: the Methyl Bromide Technical Options Committee (MBTOC) and the Technical and Economic Assessment Panel (TEAP). The MBTOC and the TEAP determined that alternatives in the International Index have the "technical potential" to replace methyl bromide in at least one circumstance of use on the identified crop (Report of the Technical and Economic Assessment Panel, 1997) (http://www.teap.org/html/teap_reports.html). A corresponding U.S. Index of alternatives (also listed by crop) has been developed by the U.S. government (http://www.epa.gov/ozone/mbr/us_alt_in.html). This U.S. Index reflects whether chemical alternatives included in the International Index have been registered for use in the United States.

Applicants must address technical, regulatory, and economic issues that limit the adoption of "chemical alternatives" and combinations of "chemical" and "non-chemical alternatives" listed for their crop within the "U.S. Index" of Methyl Bromide Alternatives. Applicants must also address technical, regulatory, and economic issues that limit the adoption of "non-chemical alternatives" and combinations of "chemical" and "non-

chemical alternatives" listed for their crop in the "International Index."

E. What portions of the applications will be considered confidential business information?

The person submitting information to EPA in response to this Notice may assert a business confidentiality claim covering part or all of the information by placing on (or attaching to) the information, at the time it is submitted to EPA, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of otherwise non-confidential documents should be clearly identified by the applicant, and may be submitted separately to facilitate identification and handling by EPA. If the applicant desires confidential treatment only until a certain date or until the occurrence of a certain event, the notice should so state. Information covered by a claim of confidentiality will be disclosed by EPA only to the extent, and by means of the procedures, set forth under 40 CFR Part 2 Subpart B; 41 FR 36752, 43 FR 40000, 50 FR 51661. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the applicant.

If you are asserting a business confidentiality claim covering part or all of the information in the application, please submit a non-confidential version that EPA can place in

the public docket for reference by other interested parties. Do not include on the "Worksheet Five: Application Summary" page of the application any information that you wish to claim as confidential business information. These application information summary sheets will be posted on the EPA website (www.epa.gov/ozone/mbr) and included in Air Docket No. OAR-2003-0017. Applications that are not confidential business information will be placed in the Docket in their entirety. Please note, claiming business confidentiality may delay the ability of EPA to review your application.

F. Must I submit a "Notice of Intent to Apply?"

A "Notice of Intent to Apply" is not required, but would facilitate the organization of the application review during the Critical Use Exemption Process. If EPA is aware of the consortia and the individuals who intend to submit applications 30 days before the application deadline, the technical experts will be better positioned to review the application. This Notice may be submitted to Marta Montoro via email at montoro.marta@epa.gov or via U.S. mail to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1200 Pennsylvania Ave., N.W., 6205J, Washington, DC 20460 or by courier to U.S. Environmental Protection Agency, Office of Air and Radiation, Stratospheric Protection Division, 1310 L St., N.W., Room 827L, Washington, DC 20005.

G. What if I submit an incomplete application?

EPA will not accept any applications postmarked after August 8, 2005. If the application is completed but postmarked after August 8, 2005, EPA will not accept the application. If the application is postmarked by the deadline but is incomplete or missing any of the following data elements listed in the "Re-Application Information Document" available at <http://www.epa.gov/ozone/mbr> EPA will not accept the application and will not include the application in the U.S. nomination submitted for international consideration. These required elements include Worksheets 1, 2B, 2C, 2D, 4, and 5. However, the entire application (all Worksheets) must be submitted and applicants must submit any new data or updated information that is relevant. However, if the application is substantially complete with only minor errors, corrections will be accepted. EPA reviewers may also call applicants for further elaboration about their application, even if it is complete. All consortia or users who have not applied to EPA in the previous year (2004) must submit an entire completed application with all Worksheets.

H. What if I already applied in 2002 and/or 2003 and/or 2004?

In March, 2004 and in November, 2004, the Parties decided that critical use exemptions would be granted for one year. As a result, users must apply to EPA for critical use exemptions on an annual basis. However, if a user group submitted a complete application to EPA in 2004, the user is only required to submit

revised copies of the selected Worksheets listed above, though the entire application with all Worksheets must be on file with EPA. A list of the Worksheets is detailed above and is also available at www.epa.gov/ozone/mbr. The remaining worksheets must only be completed if any information has changed since 2004.

If a user has previously submitted a critical use exemption application to EPA in 2002 or 2003 (first and second rounds) but did not submit an application in 2004 (third round) then the all worksheets in the application must be submitted again in their entirety.

II. What is the Legal Authority for the Critical Use Exemption?

A. What is the Clean Air Act (CAA) authority for implementing the Critical Use Exemption to the methyl bromide phaseout?

In October 1998, the U.S. Congress amended the Clean Air Act by adding CAA sections 604(d)(6), 604(e)(3), and 604(h) (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277; October 21, 1998)). The amendment requires EPA to conform the U.S. phaseout schedule for methyl bromide to the provisions of the Montreal Protocol for industrialized countries. Specifically, the amendment requires EPA to make regulatory changes to implement the following phaseout schedule:

25% reduction (from 1991 baseline) in 1999

50% reduction in 2001

70% reduction in 2003

100% reduction in 2005

EPA published regulations in the **Federal Register** on June 1, 1999 (64 FR 29240) and November 28, 2000 (65 FR 70795), instituting the phaseout reductions in the production and import of methyl bromide in accordance with the schedule listed above. Additionally, the 1998 amendment allowed EPA to exempt the production and import of methyl bromide from the phaseout for critical uses starting January 1, 2005 "to the extent consistent with the Montreal Protocol" (Section 764 of the 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act (Public Law 105-277, October 21, 1998), section 604(d)(6) of the Clean Air Act).

B. What is the Montreal Protocol authority for granting a Critical Use Exemption after the methyl bromide phaseout?

The Montreal Protocol provides an exemption to the phaseout of methyl bromide for critical uses in Article 2H, paragraph 5. The Parties to the Protocol included provisions for such an exemption in recognition that substitutes for methyl bromide may not be available by 2005 for certain uses of methyl bromide agreed by the Parties to be "critical uses."

In their Ninth Meeting (1997), the Parties to the Protocol agreed to Decision IX/6, setting forth the following criteria for a "critical use" determination:

(a) That a use of methyl bromide should qualify as 'critical'

only if the nominating Party [e.g. U.S.] determines that:

- (i) The specific use is critical because the lack of availability of methyl bromide for that use would result in a significant market disruption; and

- (ii) There are no technically and economically feasible alternatives or substitutes available to the user that are acceptable from the standpoint of environment and health and are suitable to the crops and circumstances of the nomination.

(b) That production and consumption, if any, of methyl bromide for a critical use should be permitted only if:

- (i) All technically and economically feasible steps have been taken to minimize the critical use and any associated emission of methyl bromide;

- (ii) Methyl bromide is not available in sufficient quantity and quality from existing stocks of banked or recycled methyl bromide, also bearing in mind the developing countries' need for methyl bromide;

- (iii) It is demonstrated that an appropriate effort is being made to evaluate, commercialize and secure national regulatory approval of alternatives and substitutes, taking into consideration the circumstances of the particular nomination Non-Article 5 Parties [e.g., the U.S.] must demonstrate that research programmes are in place to develop and deploy alternatives and substitutes. . . .

In the context of the phaseout program, the use of the term consumption may be misleading. Consumption does not mean the "use" of a controlled substance, but rather is defined as the formula: consumption = production + imports - exports, of controlled substances (Article 1 of the Protocol and Section 601 of the CAA). A Class I controlled substance that was produced or imported through the expenditure of allowances prior to its phaseout date can continue to be used by industry and the public after that specific chemical's phaseout under EPA's phaseout regulations, unless otherwise precluded under separate regulations.

In addition to the language quoted above, the Parties further agreed to request the TEAP to review nominations and make recommendations for approval based on the criteria established in paragraphs (a)(ii) and (b) of Decision IX/6.

III. How will the U.S. Implement the Critical Use Exemption?

A. When will the exemption become available to U.S. users of methyl bromide?

Under the provisions of both the CAA and the Montreal Protocol, the Critical Use Exemption became available to approved users on January 1, 2005. Allowances for subsequent years will be authorized through regulations. Until that date, all production and import of methyl bromide (except for those quantities that qualify for the quarantine and preshipment

exemption) were required to conform to the phasedown schedule listed above (see Supplementary Information Section II A). For more information on the quarantine and preshipment exemption, please refer to 68 FR 238 (January 2, 2003).

B. What is the projected timeline for the Critical Use Exemption application process?

There is both a domestic and international component to the Critical Use Exemption process. The following outline projects a timeline for the process for the next three years.

[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Solicit applications for the methyl bromide Critical Use Exemption for 2007 and beyond.
[INSERT DATE 75 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]	Deadline for submitting Critical Use Exemption applications to EPA
Fall 2005	U.S. government (EPA, Department of State, U.S. Department of Agriculture, and other interested federal agencies) create U.S. Critical Use nomination package
January 31, 2006	Deadline for U.S. government to submit U.S. nomination package to the Protocol Parties
Early 2006	Review of the nominations packages for Critical Use Exemptions by the Technical and Economic Assessment Panel (TEAP) and Methyl Bromide Technical Options Committee (MBTOC)
Mid 2006	Parties consider TEAP/MBTOC recommendations
Late 2006	Parties authorize Critical Use Exemptions for methyl bromide for production and consumption

	in 2007 (supplemental request) and 2008.
Early-Mid 2007	EPA publishes proposal and final rule for 2007 supplemental request.
Mid 2007	EPA publishes proposed rule for allocating Critical Use Exemptions in the U.S. for 2008
Late 2007	EPA publishes final rule allocating Critical Use Exemptions in the U.S. for the 2008 control period.
January 1, 2008	Critical Use Exemption permits the limited production and import of methyl bromide beyond the phaseout date for specific uses for the 2008 control period.

Authority: 42 U.S.C. 7414, 7601, 7671-7671q.

Dated: May 16, 2005

Brian J. McLean, Director, Office of Atmospheric Programs.